

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
The Wild Outdoors	)	
	)	CSR 5949
Video Programming Accessibility	)	
	)	
Petition for Waiver of Closed Captioning	)	
Requirements	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: June 29, 2005**

**Released: July 1, 2005**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. In this Order, we address a petition for exemption from Section 79.1 of the Commission's rules,<sup>1</sup> implementing Section 713 of the Communications Act of 1934, as amended (the "Act"),<sup>2</sup> filed by Jay Gregory and Tammi Gregory ("Gregorys" or "Petitioners"), owners and producers of the video program, "The Wild Outdoors" aired on The Outdoor Channel. Telecommunications for the Deaf, Inc. ("TDI") filed an opposition to the petition for exemption, to which Petitioners filed a reply.<sup>3</sup> For the reasons discussed below, the petition is denied, to the extent stated herein.

2. In *Implementation of Section 305 of the Telecommunications Act of 1996 – Video Programming Accessibility*, the Commission established rules and implementation schedules for the closed captioning of video programming.<sup>4</sup> In enacting Section 713, Congress recognized that, in certain limited situations, the costs of captioning might impose an undue burden on video programming providers or owners, and it authorized the Commission to adopt appropriate exemptions.<sup>5</sup> Congress defined "undue burden" to mean "significant difficulty or expense."<sup>6</sup> When determining if the closed captioning requirements will impose an undue burden, the statute requires the Commission to consider the following factors: (1) the nature and cost of the closed captions for the programming; (2) the impact on the operation of the provider or program owner; (3) the financial resources of the provider or program owner;

<sup>1</sup> 47 C.F.R. § 79.1.

<sup>2</sup> 47 U.S.C. § 613.

<sup>3</sup> TDI argues that grant of an exemption from the closed captioning rules is not warranted because Petitioner has not provided sufficient evidence to demonstrate that an exemption is warranted under the four statutory exemption factors.

<sup>4</sup> *Implementation of Section 305 of the Telecommunications Act of 1996 - Video Programming Accessibility*, 13 FCC Rcd 3272 (1997) ("Report and Order").

<sup>5</sup> 47 U.S.C. § 613(d)(1).

<sup>6</sup> 47 U.S.C. § 613(e).

and (4) the type of operations of the provider or program owner.<sup>7</sup> A petition for exemption must be supported by sufficient evidence to demonstrate that compliance with the requirements to close caption video programming would cause an undue burden.<sup>8</sup> Petitioners also are instructed to submit any other information they deem appropriate and relevant to the Commission's final determination.<sup>9</sup>

## II. DISCUSSION

3. In their Petition, the Gregorys indicated that they did not have the financial resources to absorb the cost of closed captioning.<sup>10</sup> The Gregorys do not however indicate that they solicited captioning assistance from the distributors of their programming and the response to these solicitations. Section 79.1(f)(11) provides that during the pendency of an undue burden determination, video programming subject to the request for exemption is exempt from the closed captioning requirements.<sup>11</sup> The Wild Outdoors has been exempt from the captioning requirements since the filing of its petition in 2002. Ideally, this period of exemption should have allowed the Gregorys the opportunity to identify additional sources of financial sponsorship, identify affordable captioning providers, and develop a solid infrastructure for their programming. We emphasize that this exemption was not designed to perpetually relieve a petitioner of its captioning obligation. The Wild Outdoors has been given more than a sufficient amount of time to benefit from its exemption from the closed captioning requirements. Therefore, the Gregorys are expected to complete the process of making closed captioning available to viewers with hearing disabilities.

4. Our decision herein is without prejudice to the Gregorys bringing a future petition for exemption that adequately documents that compliance with our rules continues to impose an undue burden. Implicit in the Section 79.1(f) requirement of a showing as to the financial resources of a petitioner, such as the Gregorys and the Wild Outdoors, is the question of the extent to which the distributors of their programming can be called upon to contribute towards the captioning expense. Thus, any subsequent petition should document whether the Gregorys solicited captioning assistance from their distributors and the response. Absent such a petition, Petitioners are given 3 months from the release date of this *Order* to come into complete compliance with the rules.

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<sup>7</sup> *Id.*; see also 47 C.F.R. § 79.1(f).

<sup>8</sup> 47 C.F.R. § 79.1(f)(2).

<sup>9</sup> 47 C.F.R. § 79.1(f)(3).

<sup>10</sup> Petition at 1-3. Reply at 1-4.

<sup>11</sup> 47 C.F.R. § 79.1(f)(11).

5. Accordingly, **IT IS ORDERED** that the petition for exemption from the closed captioning requirements of Section 79.1 of the Commission's rules **IS DENIED** to the extent indicated herein. Petitioners must comply with the captioning requirements within 3 months from the release date of this *Order*.

6. This action is taken under delegated authority pursuant to Section 0.283 of the Commission's rules.<sup>12</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Deputy Chief, Policy Division  
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<sup>12</sup> 47 C.F.R. § 0.283.